

COMMITTEE AMENDMENT TO H.R. 4128

**[Showing the text of the bill as reported from the Committee
on the Judiciary on 27 October 2005]**

Strike all after the enacting clause and insert the
following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Private Property
3 Rights Protection Act of 2005”.

4 **SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY**
5 **STATES.**

6 (a) IN GENERAL.—No State or political subdivision
7 of a State shall exercise its power of eminent domain, or
8 allow the exercise of such power by any person or entity
9 to which such power has been delegated, over property to
10 be used for economic development or over property that
11 is subsequently used for economic development, if that
12 State or political subdivision receives Federal economic de-
13 velopment funds during any fiscal year in which it does
14 so.

15 (b) INELIGIBILITY FOR FEDERAL FUNDS.—A viola-
16 tion of subsection (a) by a State or political subdivision
17 shall render such State or political subdivision ineligible
18 for any Federal economic development funds for a period



1 of 2 fiscal years following a final judgment on the merits
2 by a court of competent jurisdiction that such subsection
3 has been violated, and any Federal agency charged with
4 distributing those funds shall withhold them for such 2-
5 year period, and any such funds distributed to such State
6 or political subdivision shall be returned or reimbursed by
7 such State or political subdivision to the appropriate Fed-
8 eral agency or authority of the Federal Government, or
9 component thereof.

10 (c) OPPORTUNITY TO CURE VIOLATION.—A State or
11 political subdivision shall not be ineligible for any Federal
12 economic development funds under subsection (b) if such
13 State or political subdivision returns all real property the
14 taking of which was found by a court of competent juris-
15 diction to have constituted a violation of subsection (a)
16 and replaces any other property destroyed and repairs any
17 other property damaged as a result of such violation.

18 **SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE**
19 **FEDERAL GOVERNMENT.**

20 The Federal Government or any authority of the Fed-
21 eral Government shall not exercise its power of eminent
22 domain to be used for economic development.

23 **SEC. 4. PRIVATE RIGHT OF ACTION.**

24 (a) CAUSE OF ACTION.—Any owner of private prop-
25 erty who suffers injury as a result of a violation of any



1 provision of this Act may bring an action to enforce any
2 provision of this Act in the appropriate Federal or State
3 court, and a State shall not be immune under the eleventh
4 amendment to the Constitution of the United States from
5 any such action in a Federal or State court of competent
6 jurisdiction. Any such property owner may also seek any
7 appropriate relief through a preliminary injunction or a
8 temporary restraining order.

9 (b) LIMITATION ON BRINGING ACTION.—An action
10 brought under this Act may be brought if the property
11 is used for economic development following the conclusion
12 of any condemnation proceedings condemning the private
13 property of such property owner, but shall not be brought
14 later than seven years following the conclusion of any such
15 proceedings and the subsequent use of such condemned
16 property for economic development.

17 (c) ATTORNEYS' FEE AND OTHER COSTS.—In any
18 action or proceeding under this Act, the court shall allow
19 a prevailing plaintiff a reasonable attorneys' fee as part
20 of the costs, and include expert fees as part of the attor-
21 neys' fee.

22 **SEC. 5. NOTIFICATION BY ATTORNEY GENERAL.**

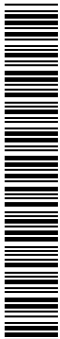
23 (a) NOTIFICATION TO STATES AND POLITICAL SUB-
24 DIVISIONS.—



1 (1) Not later than 30 days after the enactment
2 of this Act, the Attorney General shall provide to the
3 chief executive officer of each State the text of this
4 Act and a description of the rights of property own-
5 ers under this Act.

6 (2) Not later than 120 days after the enact-
7 ment of this Act, the Attorney General shall compile
8 a list of the Federal laws under which Federal eco-
9 nomic development funds are distributed. The Attor-
10 ney General shall compile annual revisions of such
11 list as necessary. Such list and any successive revi-
12 sions of such list shall be communicated by the At-
13 torney General to the chief executive officer of each
14 State and also made available on the Internet
15 website maintained by the United States Depart-
16 ment of Justice for use by the public and by the au-
17 thorities in each State and political subdivisions of
18 each State empowered to take private property and
19 convert it to public use subject to just compensation
20 for the taking.

21 (b) NOTIFICATION TO PROPERTY OWNERS.—Not
22 later than 30 days after the enactment of this Act, the
23 Attorney General shall publish in the Federal Register and
24 make available on the Internet website maintained by the
25 United States Department of Justice a notice containing



1 the text of this Act and a description of the rights of prop-
2 erty owners under this Act.

3 **SEC. 6. REPORT.**

4 Not later than 1 year after the date of enactment
5 of this Act, and every subsequent year thereafter, the At-
6 torney General shall transmit a report identifying States
7 or political subdivisions that have used eminent domain
8 in violation of this Act to the Chairman and Ranking
9 Member of the Committee on the Judiciary of the House
10 of Representatives and to the Chairman and Ranking
11 Member of the Committee on the Judiciary of the Senate.
12 The report shall—

13 (1) identify all private rights of action brought
14 as a result of a State's or political subdivision's vio-
15 lation of this Act;

16 (2) identify all States or political subdivisions
17 that have lost Federal economic development funds
18 as a result of a violation of this Act, as well as de-
19 scribe the type and amount of Federal economic de-
20 velopment funds lost in each State or political sub-
21 division and the Agency that is responsible for with-
22 holding such funds;

23 (3) discuss all instances in which a State or po-
24 litical subdivision has cured a violation as described
25 in section 2(c) of this Act.



1 **SEC. 7. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The founders realized the fundamental im-
4 portance of property rights when they codified the
5 Takings Clause of the Fifth Amendment to the Con-
6 stitution, which requires that private property shall
7 not be taken “for public use, without just compensa-
8 tion”.

9 (2) Rural lands are unique in that they are not
10 traditionally considered high tax revenue-generating
11 properties for state and local governments. In addi-
12 tion, farmland and forest land owners need to have
13 long-term certainty regarding their property rights
14 in order to make the investment decisions to commit
15 land to these uses.

16 (3) Ownership rights in rural land are funda-
17 mental building blocks for our Nation’s agriculture
18 industry, which continues to be one of the most im-
19 portant economic sectors of our economy.

20 (4) In the wake of the Supreme Court’s deci-
21 sion in *Kelo v. City of New London*, abuse of eminent
22 domain is a threat to the property rights of all pri-
23 vate property owners, including rural land owners.

24 (b) SENSE OF CONGRESS.—It is the sense of Con-
25 gress that the use of eminent domain for the purpose of
26 economic development is a threat to agricultural and other



1 property in rural America and that the Congress should
2 protect the property rights of Americans, including those
3 who reside in rural areas. Property rights are central to
4 liberty in this country and to our economy. The use of
5 eminent domain to take farmland and other rural property
6 for economic development threatens liberty, rural econo-
7 mies, and the economy of the United States. Americans
8 should not have to fear the government's taking their
9 homes, farms, or businesses to give to other persons. Gov-
10 ernments should not abuse the power of eminent domain
11 to force rural property owners from their land in order
12 to develop rural land into industrial and commercial prop-
13 erty. Congress has a duty to protect the property rights
14 of rural Americans in the face of eminent domain abuse.

15 **SEC. 8. DEFINITIONS.**

16 In this Act the following definitions apply:

17 (1) ECONOMIC DEVELOPMENT.—The term
18 “economic development” means taking private prop-
19 erty, without the consent of the owner, and con-
20 veying or leasing such property from one private
21 person or entity to another private person or entity
22 for commercial enterprise carried on for profit, or to
23 increase tax revenue, tax base, employment, or gen-
24 eral economic health, except that such term shall not
25 include—



1 (A) conveying private property to public
2 ownership, such as for a road, hospital, or mili-
3 tary base, or to an entity, such as a common
4 carrier, that makes the property available for
5 use by the general public as of right, such as
6 a railroad, or public facility, or for use as a
7 right of way, aqueduct, pipeline, or similar use;

8 (B) removing harmful uses of land pro-
9 vided such uses constitute an immediate threat
10 to public health and safety;

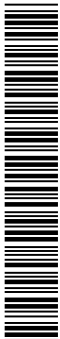
11 (C) leasing property to a private person or
12 entity that occupies an incidental part of public
13 property or a public facility, such as a retail es-
14 tablishment on the ground floor of a public
15 building;

16 (D) acquiring abandoned property;

17 (E) clearing defective chains of title; and

18 (F) taking private property for use by a
19 public utility.

20 (2) FEDERAL ECONOMIC DEVELOPMENT
21 FUNDS.—The term “Federal economic development
22 funds” means any Federal funds distributed to or
23 through States or political subdivisions of States
24 under Federal laws designed to improve or increase



1 the size of the economies of States or political sub-
2 divisions of States.

3 (3) STATE.—The term “State” means each of
4 the several States, the District of Columbia, the
5 Commonwealth of Puerto Rico, or any other terri-
6 tory or possession of the United States.

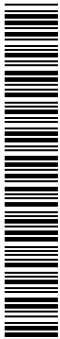
7 **SEC. 9. SEVERABILITY AND EFFECTIVE DATE.**

8 (a) SEVERABILITY.—The provisions of this Act are
9 severable. If any provision of this Act, or any application
10 thereof, is found unconstitutional, that finding shall not
11 affect any provision or application of the Act not so adju-
12 dicated.

13 (b) EFFECTIVE DATE.—This Act shall take effect
14 upon the first day of the first fiscal year that begins after
15 the date of the enactment of this Act, but shall not apply
16 to any project for which condemnation proceedings have
17 been initiated prior to the date of enactment.

18 **SEC. 10. SENSE OF CONGRESS.**

19 It is the policy of the United States to encourage,
20 support, and promote the private ownership of property
21 and to ensure that the constitutional and other legal rights
22 of private property owners are protected by the Federal
23 Government.



1 **SEC. 11. BROAD CONSTRUCTION.**

2 This Act shall be construed in favor of a broad pro-
3 tection of private property rights, to the maximum extent
4 permitted by the terms of this Act and the Constitution.

